

# CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 181

April 25, 1956

## REORGANIZATIONS: LIQUIDATION OF SUBSIDIARY

### Syllabus:

Liquidation of a subsidiary within the provisions of Section 24504(b)(2) does not constitute a reorganization under Section 23251(d). This rule applies without regard to whether or not the parent intended the liquidation when the stock of the subsidiary acquired.

Advice has been requested as to whether a transaction coming within the provisions of Section 24504(b)(2) constitutes a reorganization under Section 23251(d). The above ruling is based on the decision of the State Board of Equalization in Appeal of Andrews Motor Car Company, decided May 19, 1954.

Section 24504(b)(1) provides that in the normal nontaxable liquidation under Section 24502, the basis of the assets in the hands of the transferee shall be the same as it was in the hands of the transferor. A judicial exception to this general rule has long been recognized in situations where one corporation purchased all, or substantially all, of the stock of another corporation solely in order to obtain its assets through a subsequent liquidation. In such cases it is considered that the purchasing corporation in reality paid for the assets, rather than the stock of the other corporation. Accordingly, it is held that the subsequent liquidation is really a step of the sale transaction and that the purchasing corporation's basis for the assets is the price paid for the stock rather than the transferor's basis. (Kimbell-Diamond Milling Co., 14 TC 74, aff'd 187 F2d 718, cert. den. 342 U.S. 827.)

In the Appeal of Andrews Motor Car Company, supra., it was held that a transaction of the type involved in the Kimbell-Diamond case does not constitute a reorganization under Section 23251, despite satisfaction of the literal wording of Section 23251(d), because there is in such cases no continuity of interest in the ownership of the assets.

Section 24504(b)(2) constitutes, basically, a statutory enactment of the Kimbell-Diamond decision. Though there are some requirements imposed on the application of that section which were not present in the Kimbell-Diamond case (i.e., 80% ownership and liquidation within two years) the reasoning of the Andrews Motor Company decision is still applicable and therefore the transaction will never constitute a Section 23251 "reorganization" whenever Section 24504 (b)(2) applies.

While the Kimball-Diamond decision was based on the fact that the purchasing corporation's purpose in buying the other corporation's stock was to acquire the assets through liquidation, the statutory enactment eliminates any subjective element of intention and the basis rule there involved applies whenever the tests enumerated in the provision are satisfied. Section 24504(b)(2) will apply whenever the specific tests are met and under the rule of the Andrews Motor Car Co. case, the transaction will not constitute a Section 23251(d) "reorganization" despite the fact that liquidation may not have been contemplated when the stock was bought.